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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052150
Party	Plaintiff Wonderbread 5
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Date	11/11/2013
Attachments	Bell Trial Transcript.pdf(84543 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Registration No. 3691948 for the Word mark
WONDERBREAD 5 (Registered on October 6, 2009)

WONDERBREAD 5,

Petitioner,

vs.

Cancellation No. 92052150

PATRICK GILLES,

Registrant.

Deposition of

CLAY BELL

Wednesday, September 25th, 2013

REPORTED BY: JOAN F. MARTIN, CSR #6036

NOGARA REPORTING SERVICE
5 Third Street, Suite 415
San Francisco, California 94103
(415) 398-1889

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1 BE IT REMEMBERED THAT, pursuant to Agreement of
2 the Parties, and on Wednesday, the 25th day of
3 September, 2013, commencing at the hour of 1:00 o'clock
4 p.m. thereof, at the Law Offices of Phillips, Erlewine
5 & Given LLP, 50 California Street, Suite 3240, San
6 Francisco, California, before me, JOAN F. MARTIN, a
7 Certified Shorthand Reporter of the State of
8 California, personally appeared via conference call

9 CLAY BELL,

10 called as a witness by the Petitioner, having been by
11 me first duly sworn, was examined and testified as
12 hereinafter set forth.

13 ---oOo---

14 APPEARANCES OF COUNSEL

15 Representing Petitioner:

16 PHILLIPS, ERLEWINE & GIVEN LLP
17 50 California Street, Suite 3240
18 San Francisco, California 94111
19 BY: NICHOLAS A. CARLIN, Attorney at Law
20 ALEXANDER H. TUZIN, Attorney at Law
21 (415) 398-0900 nac@phillaw.com
22 aht@phillaw.com

23 Representing Registrant (appearing via conference
24 call):

25 MATTHEW H. SWYERS, Attorney at Law
26 The Trademark Company
27 344 Maple Avenue West, Suite 151
28 Vienna, Virginia 22180
29 (800) 906-8626 mswyers@thetrademarkcompany.com

30 Also present: Patrick Gilles (via conference call)

1 MR. TUZIN: So, Matt, will you stipulate to having
2 this deposition by phone?

3 MR. SWYERS: Yes, I will. And whether or not
4 we're on the record or not, I'll do it on the record.

5 MR. TUZIN: Okay.

6 MR. SWYERS: Just a quick -- just a quick -- are
7 we on the record? Can we do this off the record real
8 quick?

9 MR. TUZIN: Oh, off the record real quick? Okay.

10 (Discussion off the record.)

11 MR. SWYERS: I'll go back on the record and
12 stipulate.

13 MR. TUZIN: So I guess we are ready, then, for the
14 oath.

15 (Witness sworn.)

16 THE WITNESS: Yes, I do.

17 EXAMINATION BY MR. TUZIN

18 MR. TUZIN: Q. Okay. So, Mr. Bell, will you
19 please say your first and last name and spell it out
20 for the court reporter.

21 A. Clay Bell, C-l-a-y, B-e-l-l.

22 Q. Okay. Thanks. So we'll just start with some
23 background questions here. Where did you grow up?

24 A. Little Rock, Arkansas.

25 Q. Where is your permanent residence now?

1 A. Petaluma, California.

2 Q. Okay. What's your occupation?

3 A. Musician.

4 Q. That's your only occupation, the only way that
5 you make money at the moment?

6 A. Yup.

7 Q. Okay. And what is your -- what's your address
8 in Petaluma?

9 A. 209 West Street, Petaluma, California 94952.

10 Q. Thanks.

11 So how -- how did you start playing music?
12 Can you give me a little background about your music
13 playing?

14 A. I started at age 5 playing with my parents.
15 And I studied music at the University of Arkansas at
16 Little Rock. I got signed to the Ardent label in 1993.
17 Was picked up by Polygram records in 1994. I toured
18 the United States, played a little bit in Europe, and I
19 came back, started a band with four other people.

20 (Intermittent cell phone reception.)

21 (Reporter interruption.)

22 THE WITNESS: I started a band with four people.
23 The drummer left, and that drummer would later become
24 Tommy Rickard, and that's how I got introduced to
25 Wonderbread 5.

1 MR. TUZIN: Q. And what instruments were you
2 playing in -- in --

3 A. I play guitar, and singing.

4 Q. Guitar in all of your -- is that the only
5 musical instrument you've -- you've played --

6 A. And I sing.

7 Q. -- ever? Okay. So --

8 A. It's not the only instrument I've ever played,
9 but it's a long list.

10 Q. Okay. Did you begin on guitar?

11 A. I began singing.

12 Q. Okay.

13 A. And dancing and playing the spoons.

14 Q. In -- when you played with Wonderbread 5, what
15 instrument did you play?

16 A. I first came in as a vocal sub and then I came
17 in as a guitar sub, and then for one date I played
18 bass, but I'm not a bass player.

19 Q. When -- about when did you first play with
20 Wonderbread 5?

21 A. Probably 2006. That's a guess.

22 Q. Who first approached you to start playing with
23 the band?

24 A. I think Jeff.

25 Q. Jeff did?

1 A. I believe so. Yeah.

2 Q. Okay. And that was around 2006?

3 A. I believe so.

4 MR. SWYERS: If I could just clarify for the
5 record, what is Jeff's last name? If you could ask
6 him.

7 MR. TUZIN: Q. So was that -- what was Jeff's
8 last name?

9 A. Fletcher.

10 Q. Thank you.

11 And who are the members of the band?

12 A. Tommy Rickard, Pat Gilles.

13 (Intermittent cell phone reception.)

14 MR. CARLIN: Redo it.

15 MR. TUZIN: Q. Sorry, Clay. It's breaking up a
16 little bit. Can you repeat that.

17 A. (No response.)

18 Q. Hello?

19 A. (No response.)

20 Q. Sorry, Clay. We missed that entire part. Can
21 you repeat all of that again. Who -- who are the
22 members?

23 A. Yeah. It's Jeff Fletcher.

24 Q. Jeff Fletcher.

25 A. Chip Adams, Pat Gilles, Tommy Rickard, and

1 John McDill.

2 MR. TUZIN: Did you get that?

3 (Record read.)

4 MR. TUZIN: Clay, can you -- can you possibly move
5 somewhere where you have better reception or --

6 A. I'm -- I'm --

7 Q. -- maybe use a land line?

8 A. I'm in a car -- I'm in a car on the way to a
9 show. I can -- I can -- the next town -- I --

10 Q. Okay.

11 A. I'm on my way to Arcata.

12 Q. Can you -- can you pull over for -- this --
13 this should only take 15 minutes, tops; 10 minutes.

14 A. Yeah. Yeah. I'm -- I'm pulling over in the
15 next town. Hopefully, that will -- is this any better?

16 Q. I think it might be.

17 A. It doesn't look too much better here.

18 Q. Are you stopped? Is your car stopped at this
19 point?

20 A. No. Because I looked at my bars, and it's
21 kind of -- bad signal out here. I'll go up to this gas
22 station and, hopefully, it's better there.

23 Q. Can you maybe call us back when you have good
24 reception?

25 A. Let me -- and I'm going to go -- I'm going to

1 go up -- I'm going to -- I have to play in Eureka.

2 All right. Is that any better? Hello?

3 Q. Hi. Yeah, I think it might be. Are you

4 stopped at this point?

5 A. Yup. I'm stopped.

6 Q. Okay. Let's -- let's try it again.

7 So who were the members of the band?

8 A. Pat Gilles, Tommy Rickard, John McDill, Chip
9 Adams, and Jeff Fletcher.

10 Q. Okay. How do you know they were the members
11 of the band?

12 A. How do I know?

13 Q. Yes.

14 A. I guess through their interactions and talking
15 about them and talking with them and kind of -- I
16 worked with their booking agent for a long time, and it
17 seemed to be very much a band, just the way they
18 interacted and showed up. And they all had separate
19 duties in the band, I believe. Each person had a
20 certain thing they took care of to make sure the band
21 ran.

22 So it seemed like they tried to do an equal --
23 they tried to keep things pretty equal.

24 Q. Were you a member of the band?

25 A. No.

1 Q. How do you know you were not a member, as
2 opposed to them?

3 A. Because -- because every time I would get a
4 show they would say, "Can you sub or fill in for us?
5 We need a guitar player on this date."

6 Q. Okay.

7 A. Which -- and there was never a, "Do you want
8 to be a member of this band" conversation.

9 Q. How many -- how many shows did you play with
10 the band per year? First -- actually, first, what
11 years? So it was 2006, you started.

12 A. Maybe 2006 to 2012? I don't think I played
13 anything last year. Probably, on average, if you
14 averaged it out, maybe two shows a year, maybe three at
15 the most.

16 Q. Okay. Thanks. How many band rehearsals have
17 you participated in?

18 A. I can remember two.

19 Q. Okay. Have you ever appeared --

20 A. That might even be a stretch. I think -- I
21 actually think there was only one.

22 Q. Okay. Have you ever appeared on any of the
23 posters or promotional materials for the band?

24 A. Not to my knowledge.

25 Q. Okay. Do you still play with the band?

1 A. If I was asked to sub, I would still sub, but
2 I haven't been asked in a long time. I'm usually too
3 busy to do it now.

4 Q. Okay. So who would contact you to sub in for
5 one of the members?

6 A. Pat contacted me a couple of times. Jeff
7 contacted me a few times. Tommy contacted me a few
8 times. And Mike Taylor, who now plays guitar for them,
9 has now contacted me a few times.

10 Q. And who have you -- sorry. Go on.

11 A. I -- I believe that's it.

12 Q. Who have you subbed for?

13 A. Jeff Fletcher, Mike Taylor, John McDill, and
14 Pat Gilles.

15 Q. Was there any kind of written agreement
16 regarding your subbing for any of the members?

17 A. No.

18 Q. Ever since you've played -- began -- began
19 playing with the band, was Pat Gilles aware that the
20 band was using the name and mark Wonderbread 5?

21 A. Yes.

22 Q. So if Pat Gilles said that he was not aware
23 that the band was using the name over that time, that
24 would be a false statement; is that correct?

25 A. Yes.

1 Q. Okay. And how were you paid by Wonderbread 5?

2 A. Through Jay Siegan Presents, mostly. There
3 were -- when I subbed for Pat, I believe he paid me
4 directly. And I believe that's the case. I -- I
5 subbed for Jeff, you know -- you know, the first time I
6 subbed for Jeff, I don't remember how I was paid. But
7 mostly it was through Jay Siegan Presents.

8 Q. And how much would you make for each show?

9 A. It depended on the show.

10 Q. Okay. So you would -- you would negotiate
11 that before the show?

12 A. Sometimes I asked and sometimes I didn't. I
13 always figured it would be fair, and I always -- I
14 always just like to get out and play, so I -- sometimes
15 I would be told and sometimes I wouldn't.

16 And -- but generally -- generally there was
17 some discussion of how much compensation it would be.
18 And it would range anywhere from, I think -- you know,
19 I think the lowest one I did was \$77, and I -- the
20 higher one was somewhere probably around \$800.

21 Q. Were you aware that that was a split of the
22 total that the band earned, or was --

23 A. Ah -- it depend -- it was -- it was dependent
24 on who I was subbing for.

25 Q. Okay. So you would arrange the payment with

1 whoever you were subbing for at that time?

2 A. Generally, yes.

3 MR. TUZIN: I think that's all the questions we
4 have for you at this time.

5 THE WITNESS: Okay.

6 MR. SWYERS: Mr. Bell, this is Matthew Swyers.
7 I'm going to check my notes, but I think this is going
8 to be extraordinarily brief. I'm going to ask for
9 about three minutes here once again.

10 THE WITNESS: Okay.

11 MR. SWYERS: And then take a break. And I think
12 we're probably going to be done. Give me about three
13 minutes. I'll put it on mute.

14 (Brief recess.)

15 MR. SWYERS: Sorry about that, gentlemen. And
16 thank you for letting me review my notes.

17 At this juncture, I have no questions.

18 THE WITNESS: Okay.

19 MR. TUZIN: Okay. That's it, then. Thanks a lot,
20 Clay. Have a nice show.

21 MR. SWYERS: Thank you, Mr. Bell.

22 (Whereupon, the deposition concluded
23 at 1:18 o'clock p.m.)

24 ---oOo---

25

CERTIFICATE OF WITNESS

---ooo---

I, CLAY BELL, hereby declare under penalty of perjury that I have read the foregoing deposition testimony; and that the same is a true and correct transcription of my said testimony except as I have corrected pursuant to my rights under Section 2025 (b)(1) of the California Code of Civil Procedure.



Signature

10/21/13
Date

1 STATE OF CALIFORNIA)

2 COUNTY OF SAN FRANCISCO)

3 I, JOAN MARTIN, a Certified Shorthand Reporter
4 of the State of California, duly authorized to
5 administer oaths pursuant to Section 8211 of the
6 California Code of Civil Procedure, do hereby certify
7 that

8 CLAY BELL,
9 the witness appearing via conference call in the
10 foregoing deposition, was by me duly sworn to testify
11 the truth, the whole truth and nothing but the truth in
12 the within-entitled cause; that said testimony of said
13 witness was reported by me, a disinterested person, and
14 was thereafter transcribed under my direction into
15 typewriting and is a true and correct transcription of
16 said proceedings.

17 I further certify that I am not of counsel or
18 attorney for either or any of the parties in the
19 foregoing deposition and caption named, nor in any way
20 interested in the outcome of the cause named in said
21 caption.

22 Dated the 3rd day of October, 2013.

23

24

25

JOAN F. MARTIN
CSR No. 6036 (California)

1 Mr. Clay Bell
209 West Street
2 Petaluma, California 94952

3 Date: Thursday, October 3, 2013
Re: Wonderbread 5 vs. Gilles
4 Deposition Date: Wednesday, September 25th, 2013

5 Dear Mr. Bell,

6 Please be advised the original transcript of your
deposition is ready for your review. Pursuant to CCP
7 Section 2025.520(a), you have 30 days following the
date of this notice to read, correct and sign your
8 transcript unless the attending parties and the
deponent agree on the record, or otherwise in writing,
9 to a longer or shorter time period. The deponent may
change the form or the substance of the answer to a
10 question, and may either approve the transcript of the
deposition by signing it, or refuse to approve the
11 transcript by not signing it. You are not required by
law to read and sign your deposition transcript. All
12 parties will be informed of the corrections. The
original transcript will then be sealed and sent to the
13 examining attorney pursuant to the applicable law.

14 You may either come to our office to read and sign the
original transcript, or you may contact your attorney
15 or the attorney who arranged for you to be present at
your deposition. If they have ordered a copy of the
16 transcript, you may review their copy and make
corrections by submitting, signing and returning the
17 attached form. If you choose to review your transcript
at our office, please call first to make an
18 appointment.

19 Should you have any question regarding these
instructions, please call.
20

21 Sincerely,

22 NOGARA REPORTING SERVICE
5 Third Street, Suite 415
23 San Francisco, California 94103
(415) 398-1889

24 cc: Original deposition
25 All counsel